

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 25009 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
?

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**GUJARAT STATE CO OPERATIVE MARKETING FEDERATION LTD & 1 -
Petitioner(s)**

Versus

**STATE OF GUJARAT THRO' ADDITIONAL SECRETARY & 1 -
Respondent(s)**

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Appearance :

MR BS PATEL for Petitioner(s) : 1 - 2.

MS ML SHAH, AGP for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 25/09/2006

ORAL JUDGMENT

1. Heard learned advocate Shri B.S. Patel for the
petitioners and learned AGP Ms. M.L. Shah for

the respondents.

2. The petitioners herein challenge an order dated 14-2-2006 passed by the Registrar, Cooperative Societies. The petitioners have also challenged an order dated 2-12-2005 passed by the Additional Secretary(Appeals), Agriculture and Cooperation Department, Government of Gujarat by which the order of Registrar came to be upheld. The petitioner is a Cooperative Marketing Federation. To engage in the activity of providing insurance, amendment in its by-laws was found necessary. Amendment in existing by-law no. 3(28) was therefore, proposed and approved by the annual general meeting of the petitioner no.1-Federation held on 17-6-2004. Since as per the provisions contained in Gujarat Cooperative Societies Act (here-in-after referred to as "the said Act), such amendment in the by-law was required to be approved by the Registrar, the petitioners approached the Registrar for the said purpose. The Registrar however, by him impugned order dated 14-2-2005,

rejected the request of the petitioners for the reason that through amendment in the by-law, the Federation is seeking to enable itself to provide insurance and similar services. With the same objective, the Government has approved the proposal of Gujarat State Cooperative Bank Ltd. Because of this, if the petitioners are also granted such a permission, it is likely to adversely affect working of both the societies. Registrar was also of the opinion that considering the structure of petitioner no.1- Federation as well as of Gujarat State Cooperative Bank Ltd., the said Bank is likely to undertake such an activity very effectively. On this ground, request of the petitioner to amend the by-laws came to be turned down. The petitioners preferred appeal against the said order of District Registrar before the State Government. Additional Registrar(Appeals) however, rejected the appeal of the petitioners by an order dated 2-12-2005 noting that Registrar has passed a just order and same has been passed after taking into consideration

overall situation and the legal parameters. The Registrar enjoys such power under section 13 of the said Act. Considering these aspects, the appeal of the petitioners came to be rejected.

3. Learned advocate Shri Patel submitted that the orders passed by the authorities below are unjust and unlawful and are required to be set aside. Besides other grounds, he placed reliance on provision contained in Section 13 of the said Act wherein it is provided that if the Registrar is satisfied that the amendment so forwarded by the society is not contrary to this Act or the rules, he may register the amendment provided that no order refusing to register the amendment shall be passed except after giving the Society an opportunity of being heard.

3.1 Learned advocate for the petitioner submitted that before rejecting the request of the petitioners, the Registrar had not given a hearing to the petitioners. A specific ground in this regard has been made in this petition also.

There is no denial with respect to these factual assertions of the petitioners by way of affidavit from the respondents, nor the impugned order Annexure-A passed by the Registrar in any manner reflects that petitioners were given hearing before rejecting their application for amendment of by-laws.

4. Considering these aspects of the matter, I find that the order passed by the Registrar being opposed to the principles of natural justice and in particular opposed to the statutory provision contained in sub-section(2) of Section 13 of the said Act cannot be sustained. Consequently, Appellate order of the State Government also is required to be quashed.

5. In the result, both the impugned orders at Annexure-A and at Annexure -B are quashed. Proceedings are remanded to the Registrar for fresh consideration on merits in accordance with law. If the Registrar is inclined to reject the request of the petitioners, hearing shall be

granted to the petitioners as provided in proviso 2 of Section 13 of the said Act before taking final decision in this regard. If the petitioners produce additional material on record in support of their application, same also be taken into account. The entire consideration may be concluded expeditiously and preferably within a period of three months from the date of receipt of a copy of this order.

6. With these directions the petition is disposed of. Rule made absolute with no order as to costs.

(Akil Kureshi, J.)

(raghu)